STATE OF MICHIGAN

MACOMB COUNTY CIRCUIT COURT

TIMOTHY SELBY,

      Plaintiff,

vs.   Case No. 2004-2028-NH

PAUL D. MOCZARSKI, D.O.,
ST. JOSEPH MERCY HOSPITAL
OF MACOMB, an assumed name of
MERCY MOUNT CLEMENS CORPORATION,

      Defendants.

_____/

OPINION AND ORDER

Defendant Paul D. Moczarski, D.O., (hereinafter, "Defendant Moczarski"), and

Defendant St. Joseph Mercy Hospital of Macomb (hereinafter, "St. Joseph's"), have filed

motions for taxed costs, fees, and case evaluation sanctions. Plaintiff requests the Court deny the

requested relief.

Plaintiff filed suit against Defendants for permanent hearing loss of the left ear as a result

of Defendants' alleged medical malpractice. The matter proceeded to trial after all parties

rejected a July 13, 2005 case evaluation award in favor of Plaintiff for $50,000.00 and

$15,000.00 against Defendant Moczarski and St. Joseph's respectively. On February 1, 2006,

the jury returned a verdict of no cause of action for Plaintiff against both Defendants.

Defendant Moczarski contends that he is entitled to costs in the amount of $14,180.25,

and attorney fees in the amount of $51,610.50 pursuant to MCR 2.403(O), as a result of

Plaintiff's rejection of case evaluation. St. Joseph's contends that it is entitled to costs in the

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amount of $2,858.90, and attorney fees in the amount of $28,104.00 as a result of Plaintiff's rejection of case evaluation.

Plaintiff contends that Defendants are unable to recover attorney fees as they rejected case evaluation, and therefore the attorney fees claimed were not necessitated by the rejection of the case evaluation. Plaintiff also contends that Defendants claimed attorney fees are not reasonable. Plaintiff further contends that Defendant Moczarski is not entitled to recover any of the expert witness fees or miscellaneous fees listed in his invoices as taxable costs.

MCR 2.403(O) provides in pertinent part:

(1) If a party has rejected an evaluation and the action proceeds to verdict, that party must pay the opposing party's actual costs unless the verdict is more favorable to the rejecting party than the case evaluation. However, if the opposing party has also rejected the evaluation, a party is entitled to costs only if the verdict is more favorable to that party than the case evaluation.

*   *   *

(6) For the purpose of this rule, actual costs are

(a) those costs taxable in any civil action, and
(b) a reasonable attorney fee based on a reasonable hourly or daily rate as determined by the trial judge for services necessitated by the rejection of the case evaluation.

For the purpose of determining taxable costs under this subrule and under MCR 2.625, the party entitled to recover actual costs under this rule shall be considered the prevailing party.

When interpreting court rules, the same basic principles governing statutory interpretation apply. *Hanley v Mazda Motor Corp*, 239 Mich App 596, 602; 609 NW2d 203 (2000). Accordingly, when that language is unambiguous, we must enforce the meaning expressed, without further judicial construction or interpretation. *Marketos v American Employers Ins Co,* 465 Mich 407, 412; 633 NW2d 371 (2001). Similarly, common words must be understood to have their everyday, plain meaning. *Id.* A

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court rule should also be interpreted in light of the purpose the rule seeks to accomplish. *Hanley*, at 602. Further, courts must avoid constructions that render any part of a court rule surplusage or nugatory. *Yudashkin v Holden,* 247 Mich App 642, 652; 637 NW2d 257 (2001).

The Court is satisfied that despite Defendants' rejection of the case evaluation award, they are entitled to attorney fees. Plaintiff's argument has been specifically addressed in *Haliw v City of Sterling Heights*, 471 Mich 700; 691 NW2d 753 (2005) and *Ayre v Outlaw Decoys, Inc.*, 256 Mich App 517; 664 NW2d 263 (2003), and was rejected. After a thorough review of Defendant Moczarski's counsel's itemization of attorney fees, the Court is satisfied that they are entitled to $17,000.00 considering the complexity, cost, and nature of the litigation. St. Joseph's has failed however, to itemize the attorney fees requested, and therefore the Court will deny its request.

Actual costs, are those costs taxable in any civil action. MCR 2.403(*O*)(6). Where there is no statutory authority, costs are not recoverable. *Beach v State Farm Mutual Automobile Ins Co,* 216 Mich App 612, 621; 550 NW2d 580 (1996). The concept of "taxable costs" is not as broad as the concept of "expenses" as used by the Michigan Court Rules. *Id.* Expert witness fees, transcript fees, deposition fees, and motion fees are generally taxable. See MCL 600.2164, MCL 600.2543, MCL 600.2549, and MCL 600.2441; *Luidens v 63rd District Ct,* 219 Mich App 24, 31; 555 NW2d 709 (1996).

In the case at hand, Defendant Moczarski has failed to provide valid authority for the claimed "miscellaneous fees". Consequently, these expenses are not recoverable as taxable costs. Although Defendant Moczarski has failed to establish that the deposition transcript fees have been filed and read into evidence in accordance with MCL 600.2549, Plaintiff has not objected to the requested costs. Consequently, the Court finds these expenses to be recoverable

as taxable costs. The Court is also satisfied that Defendant Moczarski is entitled to recover $4,260.00 in expert witness fees considering time and complexity of the matter. The Court is further satisfied that St. Joseph's is not entitled to the "miscellaneous fees", and is entitled to $1,452.00 in costs.

Based upon the reasons set forth above, Defendants' motion for taxation of costs, fees, and case evaluation sanctions is GRANTED consistent with this opinion. In compliance with MCR 2.602(A)(3), the Court states this matter remains closed.

IT IS SO ORDERED.

_____
EDWARD A. SERVITTO, JR., Circuit Court Judge

Date:

Cc: Robert Gittlemen and John McPhee, Attorneys for Plaintiff

Cheryl Chandler, Attorney for St. Joseph Mercy

John Ramar and Michael Paolucci, Attorney for Paul Moczarski, D.O.

EDWARD A. SERVITTO
CIRCUIT JUDGE

JUN - 2 2006

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CARMELLA SABAUGH, COUNTY CLERK
BY:_____.Court Clerk

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